

**AGREEMENT TO CONTRACT FOR BETWEEN LINCOLN PARKS AND  
RECREATION DEPARTMENT  
AND LINCOLN PARKS AND RECREATION FOUNDATION**

THIS AGREEMENT is entered into by and between the City of Lincoln, Nebraska on behalf of Lincoln Parks and Recreation Department, hereinafter referred to as "Parks," and the Lincoln Parks and Recreation Foundation, hereinafter referred to as "Foundation," as of the date of Parks' execution below.

I.

Lincoln Parks and Recreation Department is a department of the City of Lincoln that provides and maintains quality parks and green spaces and offers enriching recreation activities and facilities for all people in the city of Lincoln in accordance with Title 12 of the Lincoln Municipal Code and the City Charter.

II.

Lincoln Parks and Recreation Foundation is a non-profit Nebraska corporation designated as tax exempt under §501(c)(3) of the Internal Revenue Code, and is organized for the purpose of soliciting and receiving gifts, bequests, grants and devises of property for the use and benefit of Lincoln Parks and Recreation Department consistent with its Articles of Incorporation as amended from time to time.

III.

Parks and Foundation are desirous of setting forth in this Agreement the mutual responsibilities and understandings of the two organizations.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the Parks and the Foundation do agree as follows:

1. **Foundation's Responsibilities.**

a. Parks Programs/Services Support. Foundation may assist Parks in fulfilling Parks' responsibilities under its adopted plan and, in particular, may assist Parks by providing funds and services for the management, maintenance, and support of the various parks and recreation programs and/or services established within designated areas of the City of Lincoln.

b. Fundraising. Foundation will conduct periodic fund drives, both general and project specific, for the purpose of obtaining charitable donations to be utilized in the provision of the Parks' programs and/or services within the

Parks' designated area and in accordance with Parks' missions and goals. The funds so raised may be utilized directly by Foundation for these purposes or may be transferred to Parks, as from time to time may be determined by Foundation, but in any event all funds so solicited and received shall be initially accepted in the name of the Foundation and the solicitations shall be conducted in the name of the Foundation. The name of the City of Lincoln or Parks shall not be used for the purpose of such solicitations and no prospective donor shall be advised that any such donation is being made to the City of Lincoln or Parks. Notwithstanding anything to the contrary contained herein, it is agreed that Foundation is entitled to use Foundation's name for the purpose of such solicitations and to advise prospective donors that such donation is being made to the Foundation.

c. Conduit. When Parks and Foundation mutually determine in writing that it is necessary and appropriate, Foundation shall act as a conduit on behalf of Parks, with the approval of both parties, for contracting with other agencies of government, obtaining grants, or taking other actions in which it is necessary that an organization with 501(c)(3) designation act as contractor, grantee, or otherwise. It is understood and agreed that any grant so submitted shall be in the name of the Foundation.

d. Reports. Foundation shall provide Parks with its annual audits or tax returns when requested by Parks in writing.

e. Donor Information. Foundation shall be under no obligation to provide donor information, including contact information, to Parks or any other third party and such information shall be kept confidential by Foundation as requested by donors or as deemed appropriate under the circumstances by Foundation.

## 2. City's Responsibilities.

a. Meeting Space. Parks shall provide the Foundation space for meetings of the Foundation Board of Directors. Parks may provide the Foundation with space for the office of the Foundation pursuant to a separate written agreement provided some consideration for rent of such space is furnished.

b. Promotion. Parks shall make the Parks system available to promote and/or advertise Foundation events, meetings, and products according to the extent allowed Lincoln Municipal Code and other governing law. Parks shall provide a link to Foundation's web site from Parks' web site.

c. Proposals. Parks shall, on an as needed basis, provide proposals for funding consideration that meet Foundation's funding guidelines and/or strategic plan. Parks shall also provide general advice and support to the Foundation.

d. Use of Funds. Parks shall use funds raised by Foundation to supplement government funding and not supplant government funding of Parks and use funds raised by the Foundation only for the purposes for which the funds were raised and given to Parks, including using any “restricted funds” for their intended purposes, with such limitations as provided by Lincoln Municipal Code and other governing law.

e. Reports. Parks shall provide Foundation with an accounting report on the use of funds given to Parks by Foundation at such times as are necessary and reasonably requested by Foundation in writing, but in no event less than annually.

3. Foundation Expenses. All correspondence of the Foundation shall be on Foundation letterhead, and Foundation shall pay all direct costs of paper, printing, postage, and copying; provided, however, the Foundation may utilize copying equipment of Parks subject to reimbursement by the Foundation for all accrued costs. Foundation shall also be reimburse Parks for phone and internet services when renting office space owned by Parks unless Foundation provides for such services on a separate basis.

4. No Compensation. It is understood and agreed by and between Parks and Foundation that the purpose of this Agreement is to further the mutual goals of Foundation and Parks by improving the provision of parks and recreation programs and/or services within the Parks’ designated area and neither party shall provide monetary compensation to the other party for any of the activities or services rendered, performed, or provided by either, except for reimbursements or office space as provided herein or as may hereafter be agreed upon in writing.

5. Independent Contractor. Parks is interested only in the results produced by this Agreement. Foundation has sole and exclusive charge and control of the manner and means of performance. Foundation shall perform as an independent contractor and it is expressly understood that neither Foundation nor any of its staff are employees of City of Lincoln and, thus they are not entitled to compensation, sick leave, or injury leave. Nothing contained herein shall be deemed to change or alter Foundation’s status as a 501(c) (3) organization.

6. Insurance. Foundation agrees to maintain general liability insurance as will fully protect both Foundation and Parks from claims of whatsoever kind or nature for damage to property or for bodily injury including death made by anyone whomsoever which may arise from the work performed under this Agreement, either by Foundation, any subcontractor, or by anyone directly or indirectly engaged or indirectly engaged or employed by either of them.

7. Indemnification. To the fullest extent permitted by law, Foundation shall indemnify, defend and hold harmless Parks, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or resulting from performance of this Agreement, that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting there from that is caused by the intentional or negligent act or omission of Foundation or anyone

for whose acts any of them may be liable. This section will not require Foundation to indemnify or hold harmless Parks for any losses, claims, damages, and expenses arising out of or resulting from the negligence of Parks.

To the fullest extent permitted by law, Parks shall indemnify, defend and hold harmless Foundation, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting there from that is caused by the intentional or negligent act or omission of Parks or anyone for whose acts any of them may be liable. This section will not require Parks to indemnify or hold harmless Foundation for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the Foundation.

Parks does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

8. **Fair Employment.** Foundation shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended.

9. **Nebraska Law.** This agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

10. **Integration, Amendments, Assignment.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

11. **Severability and Savings Clause.** Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

12. **Term.** The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, but in no event longer than four years after the date of execution by Parks. This Agreement may be renewed for subsequent one year periods for up to four years as the parties may agree.

13. **Termination.** Either party may terminate this Agreement at any time by giving written notice to the other party of such termination at least 30 days before the effective date of such termination.

14. **E-Verify.** In accordance with Neb. Rev. Stat. 4-108 through 4-114, Foundation agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Foundation shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. Foundation shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/everify](http://www.uscis.gov/everify).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the City of Lincoln, Nebraska below.

CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

LINCOLN PARKS AND RECREATION FOUNDATION

\_\_\_\_\_  
Foundation Board President

\_\_\_\_\_  
Date